

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM S. DALTON, ERIC SULDA and PATRICK S. DALTON

Appeal No. 2004-1925
Application No. 09/543,951

NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

The file record reflects that the appellants filed a Reply Brief (Paper No. 24) on October 2, 2003. On page 1 of the Reply Brief, appellants included a statement requesting an oral hearing in connection with the appeal.

Effective December 1, 1997, 37 CFR § 1.194(b) was amended to provide that a request for an oral hearing must be filed in a separate paper.¹

¹ 37 CFR § 1.194(b) provides in pertinent part:

If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer.

Since the appellants' request for oral hearing was not filed in a separate paper as required by 37 CFR § 1.194(b), the appellants' request for an oral hearing cannot be granted.

Furthermore, the \$280 fee for the oral hearing fee submitted with the Reply Brief is refundable under 37 CFR § 1.26 since it was paid by mistake or in excess of that required.

If the appellants desire the \$280 fee for the oral hearing fee to be refunded, a request for refund should be filed as soon as possible.

If the appellants still desire an oral hearing, a petition under 37 CFR § 1.183 must be filed **within two weeks** of the facsimile transmission date of this notice. Such a petition must include (1) a request to suspend the separate paper requirement of 37 CFR § 1.194(b); (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 1.194(b) be suspended or waived; and (3) be accompanied by the petition fee set forth in 37 CFR § 1.17(h). This **two week time period** for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).²


² If the appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that a decision on the appeal can be expedited.

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By Order of the:

BOARD OF PATENT APPEALS
AND INTERFERENCES



Craig R. Feinberg
Program and Resource Administrator

FAXED DATE: August 9, 2004
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